



October 26, 2017

BY MAIL AND FACSIMILE: (608) 789-7390

Stephen F. Matty
City of La Crosse Legal Department
6th Floor
400 La Crosse St.,
La Crosse, WI 54601

Re: Political Signs

Dear Mr. Matty:

On August 15, 2017, the ACLU of Wisconsin Foundation received an inquiry from Dennis H. Lawrence, a resident of La Crosse, indicating that he received an "official order" issued on July 11, 2017, by an inspector from the La Crosse Fire Prevention and Building Safety Department. Mr. Lawrence, a resident at 1617 West Avenue S., placed a sign in his yard reading "IMPEACH." The sign was placed only on the space directly in front of Mr. Lawrence's home and did not extend onto public property. The citation simply alleged that Mr. Lawrence was in violation of La Crosse Municipal Code Section 111.96 for displaying a sign in his front yard, without any explanation of how the sign violated the ordinance. It is our understanding that Mr. Lawrence was initially told to reduce the size of his sign to 12 square feet and then, after he reduced the size of the sign, was told a second time to reduce the size of the sign to 1 square foot. Our review of Section 111.96 reveals no 1 square foot requirement for political signs.

We believe that it was improper for the City inspector to order Mr. Lawrence to decrease the size of his sign promoting impeachment of the U.S. President for two reasons. First, the ordinance cited in the "official order" to Mr. Lawrence (Section 111.96 of the Municipal Code of Ordinances for the City of La Crosse) does not actually prohibit Mr. Lawrence's sign. The ordinance begins by limiting the application of the section to "Political signs on behalf of candidates for public office or issues on election ballots...." We do not believe that a sign reading "impeach" is applicable under the existing directive because it is not on behalf of a candidate nor is it currently an issue on an election ballot. Second, assuming Mr. Lawrence's sign does fall within the restrictions set forth in §111.96, subsection 3 indicates that in a

residential area, political signs may not be “constructed, erected or placed so as to adversely affect traffic of pedestrian safety and shall not exceed 12 square feet in area.” Mr. Lawrence’s sign was safely placed within the parameters of his front yard and his second sign complied with the requirement that political signs not exceed 12 square feet. More troubling to us, however, is that the inspector ordered Mr. Lawrence to comply with a 1 square foot size limit that is nowhere to be found within the City Ordinances.

More importantly, if the ordinance did apply to Mr. Lawrence, it would be unconstitutional. An ordinance that purported to permit law enforcement officers to suppress the display of a political sign on private property violates the First Amendment. Political speech, including campaign speech, receives the highest degree of First Amendment protection. Even potentially disruptive political speech stands upon the “highest rung of the hierarchy of First Amendment values.” *See NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982).

Courts strongly disfavor limits on political signs on private property, such as the time restrictions contained in the ordinance or the size limit imposed by the City’s Fire Prevention and Building Safety Inspector. The Supreme Court struck down an ordinance prohibiting political signs on private property, rejecting the City’s aesthetic and safety justifications. *City of Ladue v. Gilleo*, 512 U.S. 44 (1994). The Court observed that political signs on private property are a:

“[V]enerable means of communication that is both unique and important. . . . Signs that react to a local happening or express a view on a controversial issue both reflect and animate change in the life of a community. Often placed on lawns or in windows, residential signs play an important part in our political campaigns, during which they are displayed to signal the resident’s support for particular candidates, parties, or causes. They may not afford the same opportunities for conveying complex ideas as do other media, but residential signs have long been an important and distinct medium of expression.”

Id. at 54-55.

In 2015, the Supreme Court unanimously struck down a “content-based” ordinance that sought to impose more stringent restrictions on certain categories of signs over others. Under the First Amendment, a government “has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2226, 192 L. Ed. 2d 236 (2015) (citing *Police Dept. of Chicago v. Mosley*, 48 U.S. 92, 95 (1972)). Moreover, “[g]overnment regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” *Id.*

In *Reed*, the Court held that creating different categories of signs, such as political signs, ideological signs, or directional signs, and then subjecting signs within those categories to varying regulation necessarily renders the regulation content based. *Id.*, at 2227. An ordinance that targets “specific subject matter is content based even if it does not discriminate among viewpoints within that matter.” *Id.*, at 2230.

The La Crosse ordinance suffers from the same defects as the ordinance in *Reed*. Section 111.96 singles out political and campaign signs and then applies restrictions to those signs that do not apply to residential signs or directional signs, which are subject to different regulations in other sections of the code. This is the same sort of content-based speech regulation the Supreme Court invalidated in *Reed*. Mr. Lawrence was unconstitutionally restricted from exercising his right to free speech in his own home by the city inspector's unlawful application of ordinance to him. It cannot be disputed that "[a] special respect for individual liberty in the home has long been part of our culture and our law" See *City of Ladue v. Gilleo*, 512 U.S. 43, 58 (1994) (citing *Payton v. New York*, 445 U.S. 573, 596-97 (1980)).

I ask that you: (1) provide written assurances that Fire Prevention and Building Safety officials will not interfere with the lawful placement of Mr. Lawrence's sign on his property; and (2) forward this letter to the City of La Crosse so that it may consider amending its political sign ordinance to conform to the requirements of the First Amendment. I look forward to your prompt response to our concerns. I would appreciate a reply within 10 business days.

We trust that the City will take no action against the Lawrences in retaliation for asserting their rights. The ACLU of Wisconsin remains committed to protecting fundamental civil liberties and will take appropriate action when needed.

Sincerely,

Laurence J. Dupuis
Legal Director

cc: Dennis Lawrence
Henry Lawrence
(by mail)